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CORRESPONDENCE.

LABORER'S LIENS—HEAD NOTE TO OVERHOLT V. OLD DOMINION MFG. CO.

Editor Virginia Law Register :

Permit me to call your attention to the syllabus of the case of *Overholt v. Old Dominion Manufacturing Co.*, reported in December, 1900, number of the REGISTER (6 Va. L. R. 559). The third section of the syllabus reads: "In order to perfect the lien given to laborers and mechanics for mining and manufacturing companies, by section 2485 of the Code, it is not necessary that it should appear on the face of the account filed under section 2486, nor from any paper filed therewith, that such supplies were furnished or services rendered *within ninety days after the last item of the account became due and payable.*"

This statement of the law, in the syllabus, seems to be justified by the following language of the court, at p. 562: "The defect urged upon us as defeating the lien thus claimed is that it does not appear from the face of the account, or any of the papers filed therewith, *that the supplies were furnished within ninety days after the last item of the account became due and payable.*" The court, disposing of the alleged defect, decides that the objection was not well taken, and thereby seems to establish the proposition as stated in the syllabus. A careful examination of the proposition laid down in the syllabus will show that its meaning is not clear, but that it is, in any event, at variance with the real question disposed of in the opinion of the court. An examination of the opinion evinces the fact that the real point decided is that it is unnecessary for the memorandum filed under section 2486 of the Code, to show on its face that *it was filed within ninety days after such supplies were furnished or services rendered.* The reasoning of the court, as well as the statute, shows that the above is the question decided, and it is so stated in the note to the case, by the editor of the REGISTER, at page 565. The difference between this proposition and the rather unintelligible proposition laid down in the syllabus seems to call for some comment.

Again, the case turned on the construction of section 2486, as amended by the act of February, 1892. It will be noted that this act says the account must be filed "within ninety days after such supplies are furnished or service rendered," and says nothing about "when the last item becomes due and payable." The latter clause was introduced into the statute by the amendment to section 2486, of February, 1896. (Acts 1895-96, p. 341). But with this amendment the court had nothing to do and was only concerned with the amendment of February, 1892—the lien having been claimed under that act and the memorandum having been filed for recordation in 1893.

D. H. LEAKE.

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